Local Government and Regeneration Committee
Community Empowerment (Scotland) Bill

Summary of written submissions

This paper provides a summary of the key issues raised in the submissions to the Committee’s call for evidence, which closed on Friday 5 September. All submissions received by close of business on Monday 8 September (totalling 147) were considered as part of this summary. Submissions received after this point are available to Members’ but due to the time needed to prepare the summary have not been considered as part of this paper.

Like previous summaries, this document is structured according to the questions asked in the call for evidence. Where submissions chose not to address the specific questions asked, responses have been put under the most appropriate question.

Given the number of detailed submissions received it has not been possible to reflect the views of all respondents on all questions. By its nature this document is a high-level summary of the main points raised.

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1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

A number of common themes emerged in responses to this question. A very high number of submissions on both this question and question 3 highlighted the concern that the Bill would benefit already well-organised and active affluent communities to a much greater extent than disadvantaged communities.

The Scottish Community Alliance summed up the view of many third sector respondents, stating that: “this Bill contains new opportunities that communities can take advantage of and, if they do, these communities are likely to become more empowered than they otherwise would be. It has often been said during the course of the consultations for this Bill, that legislation cannot empower communities - only local people can empower themselves. Therefore, it is important to be clear that the Bill on its own is only going to present opportunities that local people may or may not be able to take advantage of. The extent to which local people choose to, or are able to, take advantage of these opportunities will inevitably vary across the country and be determined by a range of other factors – some internal, some external. These factors may be categorised as capacity (skills, experience, confidence and access to external networks), resources (funding and human), and the immediate context (supportive public agencies, local development opportunities). Each of these factors will need to be addressed if the full potential of this Bill is to be maximised.”

The Poverty Alliance made similar points, stating that: “the most important aspect of this Bill is around empowering Scotland’s most disadvantaged communities, and narrowing inequalities between those communities which are already empowered and those which will require more support. We would like to see this Bill prioritise Scotland’s poorest communities. There is a danger that the Bill, in its current form, will most benefit those communities which are already empowered and able to take advantage of the provisions in the Bill.”

Oxfam also focussed on the impact on the most disadvantaged: “Our main concern is that unless a concerted effort and specific resources are provided to engage and support our most deprived communities, the Bill may: a) Allow better-off communities to utilise the various mechanisms contained in the legislation to become more empowered, thereby accentuating inequalities. b) Fail to ensure that public sector planning and service delivery is designed with our most deprived communities at the forefront, thereby reducing inequalities and prioritising prevention.”

Annette Hastings stated that: “Historically a key driver of community development approaches to securing more effective participation has been the belief that more and effective participation might contribute to narrowing the gaps in resources, attention, opportunities and outcomes between more and less disadvantaged communities. However, I am concerned that
provisions in the Bill may exacerbate already existing social and economic inequalities by further empowering those who already hold or have access to power. While the Bill and the associated Policy Memorandum acknowledge concerns voiced during the consultation process that communities are not equally equipped to take advantage of the provisions in the Bill, it lacks specific provisions designed to address these concerns.” Steve Rolfe made similar points.

In his submission, Leslie Howson expressed the view that: “The process is very rigid and dictatorial and controlled from the top down and not the bottom (i.e. the community level) upwards. I can appreciate the need for the process to be controlled at each stage presumably to ensure accountability, combat corruption and guide the process. However, national outcomes, determined by the Scottish Minister, local outcome improvement plan determined by each community planning partnership. No community involvement there then! Who sets the outcome and on what criteria?. Those eligible to be community planning partners seems to be extremely limited.”

Development Trusts Association Scotland were broadly supportive of the Bill, stating that it “has the potential to encourage and support many more communities to become involved in community-led regeneration and crucially, to make it easier for communities to acquire vital or important physical assets, and / or have a greater role in the delivery of local services. DTA Scotland acknowledges that this will depend to a large extent on getting the detail within the accompanying statutory guidance right, but believes that parts of the Bill provide a useful overview and framework for this to take place.”

The Scottish Community Development Centre focussed on the difference between engagement and empowerment: “If, in policy, effective engagement remains the critical factor for effective community planning, we would argue that the Bill does not go far enough in its requirement to “consult such community bodies as it considers appropriate” in preparing the local outcomes improvement plan. Instead, this part of the Bill should specify that community planning partners should ‘engage’ with community bodies, and that this engagement should be in line with the definition of community engagement embodied within the National Standards for Community Engagement.”

Many submissions (from public bodies and the third sector) noted that references to these National Standards had been removed from the Bill following the last consultation. North Ayrshire Council stated: “the proposed use of the National Standards for Community Engagement, and the requirement to publish and implement a community engagement plan as discussed in the previous consultation on the Community Empowerment and Renewal Bill, should be reintroduced.”

Community Learning and Development Managers Scotland also examined the concept of empowerment: “Empowerment is not simply a matter of having rights to participate. Although these rights are necessary, they are not
sufficient. The enhanced duties for community planning will not lead to the empowerment of communities unless they are used to continue to engage with communities across a broad range of issues, to give community empowerment the priority it needs and to apply principles of social justice in doing so.” The CLD Standards Council for Scotland noted that the “adequacy of the skills, knowledge and capability base” of the public sector were critical in meeting the demands of the Bill (this is looked at in more detail in Question 2 of the call for evidence).

Voluntary Health Scotland raised the issue of “co-production” of services, linked to the need to address community capacity: “Following the recommendations of the Christie Commission on the Future Delivery of Public Services, this should be strengthened to include a significant focus on communities coming together to not only participate, but to co-produce services. … While this legislation seeks to address this inconsistency and promote best practice throughout Scotland, it is vital that the capacity of all community groups is supported at local levels by public sector partners to ensure that the most vulnerable groups are not further marginalised, and in turn, inequalities are not strengthened by the legislation.” The Edinburgh Compact suggested that the guidance accompanying the bill should be co-produced with the third sector.

Assemble Collective Self Build raised issues of funding for capacity building: “Linking the two aspects of community ‘enabling’ and community funding is critical to the success of this legislation whereby a clear framework should exist so that groups seeking to improve their living environment or protect and develop local assets can get immediate access to required expertise and/or financial assistance.” The National Trust also raised the issue of funding: “We would strongly urge the Scottish Government to create a strong support mechanism which saves community bodies from spending significant finance on building applications which should not have been raised in the first place. There is a need for this portal to also bring together the various funding bodies which will support these applications and ensure that they are clear on the capacity of their funds so that false expectations of finance are not raised. Many inappropriate or under-developed applications could be stopped at an early stage with the right support and gatekeeping.”

Public sector bodies also considered funding. Argyll and Bute Council stated: “Where empower is making someone stronger and confident to control their life and claim their right then the Bill does not adequately address this, as the Bill does not take due consideration of the resource required to enable people in communities and community groups, as defined in the Bill, to become stronger and confident in order to access the rights being provided. The Scottish Government should consider this aspect of empowerment and the costs and resources required in order to fully realise the potential of the Bill.”

Both HIV Scotland and Inclusion Scotland highlighted possible unintended negative impact on those “currently marginalised” from engagement. Inclusion stated that: “Community should not be defined by a narrow definition
based on location and residence. Disabled people are often excluded from traditional communities, or have specific needs and interests that are best addressed by their own community.”

Highland Council raised the omission of community councils from the Bill: “Given the extensive work over recent years in considering the roles and responsibilities of Community Councils, it would appear a missed opportunity not to address this within the current Bill where it would sit so comfortably. Community Council legislation primarily dates to the 1973 Local Government Act. The current community context has changed dramatically, as evidenced by this Bill, and therefore it is at odds with the current direction of community empowerment in general not to consider Community Councils given that they are a key building block within our communities.”

A number of community councils responded to this question in some detail, with many expressing disappointment that the Bill did not contain reforms to the legislation underpinning community councils. Portmoak Community Council stated that the Bill: “ignores the potential to use community councils as the elected representatives of their respective areas as the means of empowering those communities. It acknowledges the difficulty created by the fact that not all areas have a community council, but that is largely the result of their being seen as powerless and given (at least in Perth & Kinross) scant recognition by their Local Authorities. If given more concrete functions than they have at the moment there would be more interest in forming and joining Community Councils. For example the introduction of a “Community Controlled Body” into Part 3 of the bill is completely unnecessary in an area where a Community Council (which fits the definition of a Community Controlled Body exactly) is already in existence.”
2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

In general, submissions saw the Bill as potentially positive for public sector organisations, but issues of capacity, attitude and funding were seen as possible disadvantages.

Orkney Islands Council stated that in its view: “Ideally the legislation should be there to be resorted to if the simpler route to participation were to be blocked, rather than being obligatory on every occasion.” Perth and Kinross Council explained that: “An organisational mindset which sees communities as often best placed to develop local solutions to local issues will be critical. Equally there is a need to maintain accountability to the wider public in how local services are run, and the reasons for approving or refusing asset transfers or other community-led approaches to running local services must be transparent. If local asset transfers or other community-led schemes fail, all the risk and cost will return to the public sector and there may be damage to relationships within partnerships and communities as a result, with local assets becoming potentially unused and unusable by communities and public sector alike.”

NHS Grampian highlighted specific areas of the bill that would require additional capacity: “organisations will be required to put in place processes to manage community requests to improve outcomes of services. The parameters for such requests has not been set out in detail in the Bill and we would welcome more guidance on what constitutes an ‘appropriate’ community body and what is ‘reasonable’ in terms of refusal of such a request. Similarly, the provisions of the Bill enable community organisations to request and receive ‘detailed’ information about a property that they are interested in. This may include detailed information about the energy efficiency and maintenance costs. This would again require a process to be put in place and for current NHS Board Estates capacity to be directed at providing such information, at a potential cost to maintenance and delivery of Board outcomes and target.”

Glasgow City Council proposed that: “for the aspirations of the Bill to be achieved, for community empowerment to become part of the culture of organisations a programme of organisational/staff development would be helpful, even essential. We suggest that the Scottish Government initiate discussions with Local Authorities and community planning partners on how to support this and delivery of the Bill’s aspirations.”

Aberdeenshire CPP warned that: “it is possible that the Bill will be perceived nationally as a means of dumping responsibilities on to community bodies. It is important therefore that there is sufficient support in place for communities to get what they need out of the Bill. On that note, there are resource implications arising from the provisions in the Bill. Aberdeenshire Community Planning Partnership through its Single Outcome Agreement and Local Community Plans remains committed to focusing on outcomes and it is
important that the administration of certain provisions within the Bill do not take resources away from delivering improved outcomes for communities.”

Moray Council, North Ayrshire Council and South Lanarkshire Council also raised the issue of more resources, Moray stating that: “The Bill is not clear about the need to develop community capacity of groups particularly the more disadvantaged to take responsibility for assets and to participate in services that affect them and their communities. To implement the Bill effectively will require Public Sector authorities to look at additional resource to effectively support the required capacity building.”

Community Planning Aberdeen were positive about the potential impact: “The Bill provides an opportunity to ensure genuine community engagement, consultation and active participation by citizens in identifying local needs and involvement in setting priority outcomes and how they should be addressed. Also, in theory, it provides public sector partners with the opportunity to rewrite the way we engage with communities for the better and involve local people more in seeking and participating in local solutions to local issues through “co- production” and community led service design and delivery. ... Also, by opening up all public services to participation requests and making participation opportunities core within service delivery there is the potential for improved service delivery and improving public perceptions of public bodies service delivery alongside a better public understanding of existing decision making processes and constraints.”

The Accounts Commission for Scotland and Auditor General stated that: “The proposed introduction of a range of new rights for communities will mean that many public sector organisations will need to establish new administrative systems and processes to support these changes, for example to deal with community participation requests or right to buy assets. This will have resource implications for the bodies concerned. More significantly, there will also need to be a willingness by public bodies to adopt fundamentally different ways of working with communities in the redesign and delivery of public services. Implementing the proposals contained within the Bill may challenge current ways of working within and across organisations and raise legal issues which may not be simple to resolve.”

Third sector organisations highlighted a number of potential benefits for the public sector. Scottish Federation of Housing Associations stated that: “Public sector organisations will now have other partners to share some of the onerous tasks such as managing Community Planning Partnerships: conversely, they may feel that some of their control may be lost and public bodies may find this a disadvantage. There may, however, be inconsistencies between local authorities in how ‘power’ is shared, and how they are able and/or willing to deal with the potential for increased community involvement. The authorities will also have to take on new duties such as establishing, managing and maintaining the Common Good Register, and managing participation requests.”
Development Trusts Association Scotland stated that the Bill: “requires significant culture change within large parts of the public sector. This is unlikely to be easy or quick, but the Community Empowerment Bill has the potential to give out a serious and important message about Scottish Government intent. The Scottish Community Development Centre made similar points, noting that the: “challenge for organisations that continue to operate a traditional, top-down, consumer model, and those that, to date, have not been committed to community planning/community engagement. For such bodies, the Bill may well appear to be disadvantageous as it may be seen as a potential distraction or obstacle to their ability to meet centrally driven targets.”

Engage Renfrewshire highlighted the asset transfer provisions: “The Bill offers the potential for statutory organisations to release the potential of underused and unused assets. This will enable public sector agencies to divest itself of the management and maintenance of assets for which it has no productive use, which would be a saving to public expenditure. More importantly, assets taken over by the community have the potential to strengthen the capability of the third sector to deliver activities and services either independently or as part of a community planning partnership.”

Oxfam stated that it: “believes there is significant potential to improve the Bill in relation to Community Planning. The Policy Memorandum states local outcomes improvement plans should “provide a clear plan for place, focused on prevention and reducing inequalities.” Yet the Bill provides no comfort or guarantee that this will be the case. We suggest that as well as core duties for CPP partners to participate in CPPs, the Bill needs to ensure that the core purpose – and starting point – of CPPs should be to strengthen their engagement with the local community.”

Glasgow and West of Scotland Housing Associations noted that: “In our experience, public sector organisations often perceive these potential benefits as disadvantages. Framed in this way this, the key disadvantages might include: the need to relinquish control to the Third Sector and to communities themselves; and the need for a top-down and extensive culture change in public sector organisations.”

The Glasgow 3rd Sector Forum stated that: “Public sector organisations may need to disinvest in some services in order to re-invest in more preventative, co-produced and community oriented services. It will need to balance responding to ongoing priorities with facilitating a shift to a more preventative approach. Resources will be required by the Public Sector (and others) if we are to address culture change and staffing issues.”

Steve Rolfe noted that “there is relatively little robust research evidence which demonstrates savings as a result of community participation. However, the research review conducted by the Office of the Deputy Prime Minister in 2005 (‘Improving delivery of mainstream services in deprived areas – the role of community involvement’) suggested that the process benefits of community
involvement (e.g. better local knowledge, better access to services, etc.) feed through into reduced unit costs of service provision, and reduced costs in other aspects of service provision such as lower housing management costs through reduced tenant turnover.”

Finally, UNISON Scotland raised a point no other submission covered – whether community empowerment is “a way to deliver services more cheaply. Where outsourcing services has claimed to save money it has been through cutting jobs, wages and the terms and conditions of the staff who deliver those services.” UNISON went on to state that: “Despite concerns raised by UNISON during the earlier consultations the workers, who currently deliver services on/in the land and building that community groups will have the right to ask to takeover, are not mentioned in the Bill. There is a big difference between a community taking over unused public buildings and land and putting then to public benefit than for example taking over the health centre, library or swimming pool. UNISON is also concerned that the staff who currently deliver services could be replaced by untrained volunteers. There needs to be much more clarity about how this will impact on services and the staff who work there.”
3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

As noted under Question 1, many submissions raised similar issues in response to these two questions – chiefly around issues of the capacity of more disadvantaged communities to take advantage of the Bill.

Development Trusts Association Scotland highlighted two issues: “one of ensuring the sufficient availability of funding and resources which support the activities covered within the Bill, and secondly, as the question suggests, ensuring that the right kind of information, advice and support is available to, where necessary, build the capacity of community anchor organisations to take advantage of the provisions.”

SCVO noted that: “The ability of communities to take advantage of the provisions in the Bill can be shown from the many successful community projects which have already been taken forward. Significant and challenging projects from North Harris to Cassiltoun, demonstrate the scale and diversity of successful projects that have been achieved in communities of all types. However, there are also communities that have been unable to achieve their objectives. The reasons this happens are complex and can range from financial problems to volunteer fatigue. If we wish to see more success, then creating the right conditions for communities to thrive should always be the priority and there are a number of practical ways this can be achieved.”

Inclusion Scotland stated that: “Disadvantaged and marginalised communities, including disabled people, are less likely to be able to take advantage of the opportunities afforded by the community right to buy, and this is likely to exacerbate inequalities between them and more well-resourced communities. The Bill does not make any specific mention of Equalities considerations. Nor do the proposals offer any level of support to marginalised communities which would enable them to engage with the Community Planning process. In addition marginalised, fractured and impoverished communities will, by definition, have fewer assets, or assets of lower quality, in their areas, which will in turn be harder and more expensive to manage and maintain.”

Many submissions from the third sector, and from the public sector, raised the issue of Participatory Budgeting. The Poverty Alliance stated that: “including participative budgeting in the Bill would help further empower communities. CPPs should be required to set aside a percentage [1%] of their annual budget to be decided on through community participation.” Others called for 10% to be set aside.

The Scottish Community Alliance again highlighted the differences between affluent and disadvantaged communities: “All communities are different, have widely varying capabilities and levels of capacity with which to take advantage of opportunities as they present themselves. There is well researched
evidence to show that when resources are scarce, those communities with ‘sharp elbows’ end up with the lion’s share of what is available. Given the absence of a level playing field in this respect and in the interests of supporting those communities where need is greatest, there is going to have to be substantial investment in compensatory measures. But this is not just about resources – although that is important – it is as much, if not more so, about how these resources are allocated.” SCDC, Carnegie, Voluntary Health Scotland and others made similar points.

Public sector bodies also made similar points. Argyll and Bute Council noted that: “Communities across Scotland are likely to be encouraged by the provisions of the Bill but in many instances, depending on the nature and complexity of the asset in question, they are likely to require additional professional support to develop business cases or funding applications. Future sustainability of large scale assets is also of critical importance and although community activists can support the initial thrust to secure and manage an asset, it is questionable whether this can be sustained in all instances particularly when key individuals move away from an area or their ability to continue to support the project diminishes over time. Therefore, particularly with respect to larger and complex transfers of assets, the long term sustainability of proposals should be investigated thoroughly at the outset.”

North Ayrshire Council also noted the issue of resources: “Support for groups and organisations to build their own capacity and aspirations is a basic requirement, and needs to come from the public and third sectors. Resources have been reduced through the process of public sector reform and are often insufficient to effect lasting change in communities.”

Again under this question, submissions highlighted the National Standards on Community Engagement. HIV Scotland stated that: “We support proposals by Oxfam, Barnardos and the Poverty Alliance to renew existing national standards for community engagement. We agree that the Bill should enable Ministers to create statutory regulations for the engagement and empowerment of communities, which all public bodies must follow and regularly report upon. We also believe that a key part of the standards should focus on empowering communities of interest rather than just those of place and are supportive of proposals to require Community Planning Partnerships to adhere to the Standards when they are creating local outcomes improvement plans.”

Children in Scotland made the point that: “there are groups and individuals who are detached and disengaged from effective engagement with community structures and that they are likely also to be those who experience marginalisation in other aspects of their lives. It is should not be a case of ‘training’ such people to fit in with structures largely devised and driven by large bureaucratic bodies, but ensuring that systems are accessible, enabling and, critically, can show that community participation is not a tokenistic compliance with a statutory duty but can bring about positive change.”
Volunteer Scotland highlighted that: “The success of the Bill, and community empowerment more generally, is built on the assumption that individuals and communities can/will do more on a voluntary basis to empower their community – take on assets, join representative bodies; deliver services and activities locally – but the evidence tells us this is unlikely to happen. The Bill needs to recognise this assumption and the facts of Scotland’s declining volunteer numbers. In this context much, more needs to be done to support individuals and communities to participate and tackle inactivity.”

Community Planning Aberdeen made the point that “the community” does not “always speak with one voice”, and that: “there will be a need to consider how the various voices that may at times conflict, or oppose, can be considered and ensuring that community empowerment goes beyond those citizens who are already actively involved. This is perhaps an area as the Bill is implemented that the Scottish Government may want to develop good practice guidelines.”
4. Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

The summary of evidence for this question has been divided by the eight parts of the Bill.

**Part 1 – National Outcomes**

Part 1 received limited comment compared to other parts of the Bill. Dr Pugh and Dr Connolly stated that: “in relation to Part 1, consideration could be given to strengthening ministers’ and/or local authorities and public bodies to develop national outcomes in genuine partnership with local community representatives, such as through participatory budget-setting, consulting citizens’ juries on policy priorities or holding online referendums in relation to these matters.”

UNISON Scotland made detailed comment on Part 1, focussing on the Scotland Performs Website, and comparing it to the Virginia system: “Scotland Performs has surface similarities to Virginia Performs but is nowhere near as extensive in terms of data or analysis. The Virginia site offers both easy to read graphics for a range of geographical and subject areas for those looking for snapshots as well as explanations/discussions of issues and extensive data for those seeking wider information or wishing to do their own analysis. Scotland Performs is not the “go to” place for data on Scotland or the delivery of its services nor has it become a source of debate or discussion.”

Voluntary Action stated that Part 1: “needs to be strengthened further to ensure that meaningful consultation is undertaken on the outcomes with a broad range of stakeholders, allowing for civic society and communities to voice their opinion and help set the outcomes. This will help empower communities rather than the process being driven and set by the centre. In order for a participatory approach to be successful the process for setting national outcomes needs to be simple and done in plain English that people in communities can relate to. Throughout this response we are calling for the National Standards for Community Engagement to be adopted in this regard to act as a code of conduct for engagement, albeit an updated list of standards that has co-production embedded within them.” Glasgow third sector forum raised similar points on consultation.

The Accounts Commission and Auditor General made a number of comments on Part 1, including that “if the commitment to set national outcomes is intended to provide greater clarity about trends in national performance, it is important to recognise that national outcomes can mask significant local variation in performance. Given this, it would be important that any national indicators that are set help assess how reductions in the wide inequalities of outcomes (health, life expectancy, educational attainment, etc.) that persist across Scotland are being addressed.”
Part 2 received a range of detailed comments from across all sectors. Many submissions highlighted problems with the current system of community planning, especially in relation to community involvement. Others sought clarity regarding how the new provisions would work with other existing legislation, including the status of existing community planning partners.

Perth and Kinross Council focussed on accountability, and stated that: “The accountability of individual CP partners remains a critical success factor for Community Planning in Scotland. We recognise that accountability lines can never be simple in a world of complex public service requirements. There is insufficient detail about accountability and reporting requirements on CP partners and how these would be strengthened in practice to ensure a shift of emphasis away from process (attending meetings, contributing to the drafting of the SOA, etc) and towards effective collaborative action focussed on place based preventative delivery which improves outcomes for communities. It is not clear how new reporting mechanisms would be monitored, or intervention/enforcement would be affected in relation to CP partners which did not meet their new accountabilities.”

Argyll and Bute Council questioned “in what way the reference to partners in community planning impacts the provision for the council to be the lead in the CPP as laid out in the Local Government Act 2003. It would also be beneficial for the definition of terms such as community planning in section 4.2 to be written in a way that is meaningful and understandable for the public.”

Glasgow City Council also raised the issue of leadership: “Whilst the change in duties addresses perceived problem of lack of accountability of other public bodies for their contribution to Community Planning, the question arises as to whether this new formulation alters the role of local authorities in Community Planning. On one reading the new duties offer a shared leadership model. However, how will this work in practice, if partners don’t agree roles and responsibilities. In addition does it meet the test of accountability?”

The Accounts Commission and Auditor General also covered this issue: “The Bill seems silent on any community leadership role of a local authority, given its repeal of the duty on a local authority to facilitate community planning in the 2003 Local Government in Scotland Act. In our response, we stated that “it is difficult to predict what might happen were the specific duty on councils to ‘initiate, facilitate and maintain’ the community planning process to be repealed”.

Similarly, Portmoak Community Council highlighted the “misuse of the word ‘outcome.’ Its dictionary definition is ‘result or consequence’ yet that is clearly not what it means in Part 2. It appears to be used as a synonym for ‘objective.’ Yet in part 3 it appears most of the time to be intended to convey its dictionary meaning. The clarity of the drafting would be much improved if
the word ‘outcome’ were to be avoided and another word, appropriate in the context substituted.”

On the issue of sharing budgets, both Angus CPP and NHS Tayside noted that: “we have no difficulty with the concept of CPP members challenging each other’s expenditure, but to give the CPP powers actually to stipulate the sum to be spent by each partner is a step too far.”

In terms of community involvement in CPPs, Voluntary Action Scotland argued that “In order to secure the input from community bodies that is necessary to inform community planning there needs to be a strong community capacity building element, however, this does not appear to be present in the current iteration of the Bill. The duty on Community Planning Partners should extend to beyond merely securing input from community bodies to pro-actively developing the capacity for community bodies to exist and develop their knowledge in order to contribute to the community planning process. ... The language still leans towards top-down involvement rather than bottom-up processes, involvement is on the terms of the statutory agencies, at the very least we would be advocating guidance on the Bill once enacted to define more clearly what constitutes ‘reasonable effort’.”

Dollar Community Council went further, proposing that the Government: “develop statutory orders to compel Local Authorities to heed the wishes of local communities within the parameters laid down in current and future planning regulations. The bill must also include an ombudsman to which Community Councils may turn when these duties are not properly performed because it is felt that, based on our evidence, the Committee should not underestimate the changes needed to counter the ‘top-down’ inclinations and culture of present-day planning departments.”

A large number of submissions made suggestions for additional bodies, or groups of bodies, to be included in CPP arrangements, or to be consulted:

- Many submissions (including Glasgow third sector forum, Highland Council, and CO-Cheangal Innse Gall), suggested the third sector, specifically the third sector interfaces, should be included as community planning partners.

- Children 1st suggested that children and young people should be consulted.

- The Scottish Federation of Housing Associations suggested that the Bill must overtly mention housing associations and co-operatives as community bodies

- Scottish Enterprise and Scottish Council for Development of Industry suggested consultation/inclusion of businesses.
The Community Justice Authorities suggested various justice bodies be included.

The Regional Transport Partnerships suggested that they should be included as governance bodies.

SportScotland suggested that it should be removed.

Part 3 – Participation Requests

Familiar issues were raised in submissions on Part 3, chiefly to do with capacity of communities to take advantage of the provisions. A number of submissions also highlighted the lack of appeals process.

Oxfam stated that participation requests: “risk becoming the privilege of already empowered communities with greater capacity to access, navigate and resource such a process. Consideration should be given to how public bodies can provide clear information and potentially financial resource in relation to participation requests – particularly to deprived communities. Section 9 (3) (b) recognises that funds and resources may be necessary for ensuring the engagement of community bodies in community planning and we see no reason why this shouldn’t be the case in relation to participation requests. As such, the Bill should actively remove barriers to engagement. Secondly, there is no ability to appeal a decision should a participation request be rejected. This seems particularly strange given that a form of appeals and reviews are available for asset transfer requests (through section 58 and 59). We propose that an independent review process be included in relation to participation requests – with a clear route outlined.”

Many others made comment on the appeals process, the Scottish Community Alliance stated that: “The absence of any appeal process leaves the balance of power with the public body which may ultimately discourage communities from exercising this right. It is however to be welcomed that there appears to be a presumption in favour of the community’s right to participate with a requirement on the part of the public body to explain it refusal.”

On resources, Children 1st made the point that: “The aspirations of the bill to meaningfully involve the community must be matched by resources; we are concerned that in reality this may not be accessible for certain members of the community. The bill does not mention how community members will be made aware of the opportunity for participation requests, or what support will be offered to those interested in participation requests. It is vital that this information is available in communities. Questions around the funding and information sharing of budgets of a successful participation request. It is unclear who will continue to provide the funds to run that service, if a community participation body is successful in applying to run a service, and if budget information will be shared and passed on. We are also unclear how this may impact tendering and strategic commissioning of services and would welcome clarity on this.”
Public sector bodies focussed comment on the definition of community bodies. Fife CPP stated that: “Unincorporated associations are not recognised as entities separate from their members. Consequently, such organisations cannot carry out acts, such as entering into contracts, owning property or engaging employees.”

NHS Health Scotland made a similar point: “Health Scotland’s experience of engagement with the third sector suggests that a focus only on community bodies with a written constitution (part 3 section 14) could miss the communities at the sharpest end of deprivation and health inequalities with evidence south of the border suggesting that deprived areas have fewer charities and voluntary groups The picture concerning place-based policies and dimensions of equality was very usefully reviewed north of the border by the Equalities and Human Rights Commission.”

And on the status of ALEOs, South Lanarkshire Council stated that: “We note that Ministers can designate bodies as public service authorities if they are wholly owned by one or more public service authority, or deliver services on their behalf. However, we feel it is essential for the Bill to be explicit in terms of how Arms Length External Organisations (ALEOs) are to be included in provisions. Specifically, we would like clarity over who or what entity can agree or refuse requests when a service is being delivered on behalf of a health board or council. Could, for example, an attached ALEO be involved in the refusal, where they may have a conflict of interest?”

UNISON Scotland raised the issue of public sector workers: “The Bill needs to be much clearer about protections for those workers who currently deliver services on/in the land and building that community groups will have the right to ask to takeover. Public bodies should have the right to buy back assets at the original price if a community group decides to sell. Any groups which deliver public services should also be subject to the same Freedom of Information and Equalities duties as public bodies.”

**Part 4 – Community Right to Buy Land**

The RACCE Committee is due to consider whether it will take on stage 1 scrutiny of Part 4 of the Bill at a meeting in early October 2014. Therefore, comments on Part 4 have not been included in this summary of the submissions for the LGR Committee. A number of submissions focussed on the detailed reforms proposed in Part 4.

**Part 5 – Asset Transfer Requests**

Similar points were raised in response to Part 5 as in the response to Part 3. One additional major theme was the call from a large number of submissions for a national Asset Register.
Carnegie stated that: “We would like to see the introduction of a national asset register used by all public sector bodies, which is publically available, accessible and can be modified over time. Community bodies may have an interest in a wide range of public sector assets and a publically available database of publicly owned assets which details where the asset is; what it is currently used for; which public sector body owns it and who to speak to about it would be very helpful.”

SCVO, The Alliance, DTAS, the Poverty Alliance and others made similar points. SCVO stated that: “We are disappointed that the Bill does not provide a duty for public bodies to maintain and publish an asset register. Knowing what assets a public body holds which could be made available for community use would be a significant resource for communities. It would allow them to look at all the assets in their area and identify those which would suit their purpose.” The Alliance also noted that: “It is important to recognise, however, that the hard work for many community-led organisations will begin after an asset transfer has taken place, e.g. securing funding for refurbishment and ongoing costs. The ALLIANCE therefore believes that additional capacity building is required to ensure that community bodies taking on assets are adequately supported.”

NHS Tayside noted the possible challenges for the public sector: “The benefits to communities to exercise their rights to buy and request asset transfers have many potential positive outcomes. However, at a time when we are and will continue to be challenged financially, for most NHS Boards, the need to vacate property ‘not fit for purpose’ and secure optimal returns from the sale of such assets via the open market has been an absolute necessity. The right to buy should therefore be at the full market value of the land or buildings and through the open market.”

Highland Council made the point that “There is no current provision within the legislation if more than one community transfer body makes an asset transfer request (ATR) in connection with the same or similar piece of land/property either: a) at same time, or b) at different times (ie. the relevant authority is already responding to one ATR and another ATR is made). Provision/guidance will be welcomed for dealing with this eventuality either within the legislation or the regulations.

The Federation of Small Businesses commented that: “Firstly, if the transfer of an asset is accompanied by any form of public funding, a rigorous test of displacement is required when assessing the proposed activity. For example, using a vacant building to fund community-run commercial activity which directly competes with existing businesses (or may do so at some point in the future) is particularly unhelpful for our high streets. Secondly, it should be a statutory requirement that the asset owner must identify and consult with any business or organisation using the asset, prior to agreeing any transfer request. We are aware of concerns from businesses that this does not always occur and a change in ownership or conditions may have a huge impact on
businesses which rely on the asset. This might include assets such as parks or open spaces, filling stations, halls, cafes/visitor centres or piers. Notwithstanding the business impact, problems arising from lack of consultation and agreement, can lead to community breakdowns, especially in small communities.

Part 6 – Common Good Property

Most submissions broadly welcomed the proposals in Part 6, although many questioned whether the provisions could have gone further, in particular in providing a definition of common good.

Glasgow City Council made this point, and stated that: “One of the main difficulties encountered by Local Authorities in dealing with Common Good issues is determining what actually constitutes ‘Common Good land’. The existing law on Common Good is obscure and uncertain due, mainly, to the lack of legislation in the area and the absence of definitive and clear case law. The Bill does not attempt to define ‘Common Good land’ and no guidance is given as to which assets ought to be included in the Register.”

SOLAR made three requests for clarification:

- “How and in what circumstances moveable assets held on the common good account could be disposed of. The legislation is currently silent on this point

- Definitions of “alienable” and “inalienable” common good. The lack of clarity on these definitions has resulted in the Keeper of the Registers of Scotland refusing to issue a full title indemnity on the sale of any common good land, even where the property is clearly alienable.

- Ideally, the Bill would attempt to define common good rather than having to rely on less than perfect common law definitions.”

DR L D Neil made a number of specific points on Part 6: “In general terms, the greatest risk to the integrity of CGFs arises from the activities or inactivity of local authorities (LAs). Insufficient time and effort has been spent in the past to administer CGFs in most Scottish LA areas in order to carry out the duties imposed on them since the Local Government (Scotland) Act 1973. In addition, councillors elected to an LA area are beset by the conflict of interest between their duty to the local authority and the duty of trusteeship of SGFs prescribed by the act. … It is noted that it is anticipated (Financial Memo.) that the costs to LAs of bringing the currently inadequate CGF registers up-to-date will not generate an additional cost to LAs. That is unrealistic given the work that will be involved in correcting the neglect of decades of LA failure to compile adequate and accurate registers.”

Highland Council and other local authorities/CPPs questioned the provisions on consultation: “The Highland Council has responsibility for administering ten different Common Good Funds (Cromarty, Dingwall, Dornoch, Fortrose and
Rosemarkie, Grantown, Invergordon, Inverness, Kingussie, Nairn and Tain). In relation specifically to Community Councils, the current wording in the Bill would require Highland Council to consult with all 156 Community Councils in its area on the establishment of a register and each disposal of property across any of the funds. We would therefore strongly suggest that the wording be amended to read “consult only with Community Councils that represent the inhabitants of the areas to which the Common Good related prior to 16 May 1975.”

Part 7 - Allotments

While only a relatively small number of submissions focussed on Part 7, some provided very detailed comment. The Scottish Allotments and Garden Society summed up its submission: “We are pleased that the Government has recognised that the existing legislative framework for allotments is complex, and consultation has shown strong agreement that it needs to be updated. We welcome the statutory protection of allotments in the Bill. However we are concerned that the Bill repeals the existing legislation and in doing so some of the protections for plot-holder and allotment sites contained in the provisions of the old legislation appear to have been lost. There is no duty on the local authority to provide suitable land from their existing stock or by lease or purchase. Without such a duty the aim of the Bill to strategically support allotments and community growing spaces cannot be fulfilled.

We hope that the following amendments to strengthen the current legislation will be accepted by the Local Government and Regeneration Committee. The detail in this document is from a working group of twelve members of SAGS who have discussed and researched it over the summer. Our response has been shared with the wider membership of the organisation which covers every region in Scotland.”

Nourish also provided detailed comment, including that: “At the moment this Part of the Bill is a strange mix of detail, timescales and reporting requirements. For example, the local authority is under an obligation to maintain waiting lists for allotments and to provide allotments. They must also issue a yearly report on allotments, waiting lists and the measures they have taken to provide allotments. However, the local authority is also under an obligation to prepare a food growing strategy within two years of the Bill coming into force. The strategy should also identify areas that might be used to provide allotment sites or other areas of land that may be used for community growing. This must be reviewed every 5 years but there is no requirement to report on it.”

The Scottish Community Alliance stated that: “However there are aspects of the old legislation that appear to have been lost. In particular the duty on local authorities to provide suitable land to meet demand from their existing stock or by leasing or purchasing new land does not appear in the new legislation and this will undermine the aim of providing better support for demand for allotments and community growing spaces. SAGS have raised a specific
concern about the lack of precision in the Bill when referencing the size of an allotment and have proposed that the Bill should refer to a normal plot as being 250 square meters (which can then be subdivided into halves or quarters to suit local circumstances)."

Some public sector bodies highlighted potential costs. Glasgow City Council stated that: “The Financial Memorandum attached to the Bill would put the Capital Invest required to comply with the Section 72 Duty to provide Allotments at £3.4m. Glasgow City Councils own estimates are significantly higher. It is essential that the Financial Memorandum which accompanies the Bill makes adequate provision for the costs of implementing the provisions. It is also unclear whether conversion of existing green space to Allotments by the Local Authority constitutes permitted development.” And, Aberdeen CPP noted that: “The bill effectively requires the Council to provide allotments. Whilst there are good reasons for this, it does not take account of the potential cost. Land values in Aberdeen are high and the Bill could result in the Council requiring to spend money purchasing land or making land available (which it would otherwise sell for a capital receipt) for the purposes of providing allotments.”

Finally, the Glasgow Third Sector Forum recommended: “adding a requirement to include a proportionate number of accessible allotments in any new allotment, for use by wheelchair users and buggies. Accessibility aspects would include wide, all-weather decking and raised planting areas. For all existing allotments, we recommend that accessibility be phased-in over five years from the date of the implementation of the Bill. This equalities-based suggestion would clearly need to be resourced, and public bodies should be encouraged or required to make provision for this.”

**Part 8 – Non-Domestic Rates**

Again, this Part produced limited comment from most submissions. Reform Scotland highlighted its own Local Taxes report, and stated that: “Whilst the ability to create localised relief schemes to reflect local needs and support communities proposed by the bill is to be welcomed, we would like to see far greater decentralisation. Reform Scotland believes that each tier of government should be responsible for raising the majority of what it spends. Councils in Scotland today arguably have no real control over raising the tax revenue they spend (due to centralisation of NDR and the council tax freeze) despite being responsible for a significant proportion of expenditure.”

While welcoming the principle of local discretionary relief, and calling it “a welcome acknowledgement of the need to keep down costs for retailers and other businesses”, the Scottish Retail Consortium strongly warned against “the provisions within the Bill being amended to allow councils to increases rates bills, for example in the form of a local discretionary supplement. Our research shows that one in every eleven retail premises is empty, and anything that makes it more expensive or more difficult for retailers to invest will only exacerbate this problem.”
The Federation of Small Businesses noted that it was “cautious about the likely impact of this new power, particularly if they have to be fully funded by the local authority. In England, where similar powers already exist for local authorities, there has been virtually no introduction of relief. A recent report by the FSB in Wales, also found that where local authorities have power to grant relief (using discretionary rates relief), only half had granted any discretionary relief in the previous 3 years.”

In terms of local authorities, East Ayrshire Council and others raised possible issues with the proposal that local authorities fully fund their own relief schemes: “This will place the financial burden of the local relief scheme on the Council with the total contribution to the National Pool being unaffected by those local schemes. There is therefore concern that some of the national schemes currently in place (for example, Small Business Bonus Scheme, Fresh Start, New Start) may either end or be significantly amended by Scottish Government. Accordingly, should the Council wish to continue such schemes for example, to help regenerate town centres by encouraging empty properties back into use, then it would be potentially at the Council's expense. It would be important therefore that Scottish Government/national funding streams continued to be made available and accessible to support local authorities.”
5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

A high number of responses to Question 5 highlighted the lack of a published Equality Impact Assessment, and many raised issues about inequality of opportunity for different communities, that had been raised under other questions.

Inclusion Scotland stated that it “would like to see a much more robust Equalities Impact Assessment carried out which properly addresses the potential dangers that marginalised communities, such as disabled people, may face if recognition of community groups is granted to professional or already well-resourced groups at the expense of groups representing disadvantaged or equalities groups.” Argyll and Bute Council stated that: “In respect of the equality impact assessment that has been carried out, which concludes that the Bills provisions are neither directly or indirectly discriminatory in respect of age, disability, race, religion or belief, sex, sexual orientation or gender reassignment, it would be useful for this to be published for viewing.”

And, Unison Scotland stated that: “There needs to be recognition of the many different groups and individuals who want and need to access public services. There must be substantial protection service users, particularly those voices that are already less well heard in Scotland, from the well organised well off further controlling assets and influencing service delivery to suit their needs. The Equalities Impact Assessment of the Bill has not yet been published. This should be a fundamental part of the policy development process not an add-on once the main work has been done. It is impossible to see if this has been investigated and protections are in place without access to the assessment.”

Argyll and Bute also raised the issue of “island proofing”, stating that “it would be useful to understand how much of the bill has been “island proofed”, and to understand which aspects of the bill will produce a differential impact on the islands.” Similarly, Orkney Islands Council stated that: “There is very little in the assessment of impacts on island communities in the Policy Memorandum. As noted in our response to the 2012 consultation, the protected characteristics enshrined in the Equality Act 2010 do not include the key equality consideration for island populations, which is geographical access. We would like to see this addressed as a matter of course in all assessments of impacts on island communities.”

Children 1st noted that: “this bill does not mention children and young people and their role in community empowerment. The Children and Young People (Scotland) Act 2014 places duties on Scottish Ministers to take UNCRC requirements into account, and we therefore consider that a Child Rights Impact Assessment should have been conducted to assess the bill’s impact on the rights of children.”
Community Health Exchange made detailed comment on inequalities: “Average health in Scotland continues to improve while health inequalities continue to increase. NHS Health Scotland’s recent review of health inequalities highlights the stark impact on life expectancy and health outcomes between the most affluent and least affluent communities in Scotland. The indicators show social, economic and health inequalities will continue to increase if cuts in welfare provision continue to be implemented. The NHS and the community and voluntary sectors are already experiencing an increase in demand on services as a result of austerity measures. ... There is real concern that implementation of the Bill as it stands will exacerbate health inequalities with stronger and more powerful voices prevailing from already organised and more affluent communities. It is expected that more affluent areas will mobilise further to take up new opportunities that the Bill’s offers. Therefore, priority attention and resources should be allocated to communities that have greater challenges.”

South Lanarkshire Council made a similar point, and indicated that there should be a specific duty on CPP partners to reduce inequality and focus on early intervention and prevention.

The CLD Standards Council for Scotland stated that: “We have highlighted throughout these comments that there are significant risks that the Bill’s provisions inadvertently increase inequalities between communities. These are not primarily inequalities relating to the “equalities groups” considered by the Equality Impact Assessment. However, it seems likely that in some instances the members of “equalities groups” are over-represented in geographic communities that are economically and socially disadvantaged, and/or that the effects of inequality experienced by members of “equalities groups” are exacerbated by living in disadvantaged areas. These are likely to be important factors in developing realistic strategies for supporting community empowerment.”

SEPA and others highlighted a possible lack of analysis of the sustainable development impact of the bill: The Policy memorandum provides a ‘light touch’ assessment of the sustainable development impacts of the Bill. The Bill has the potential to make a positive contribution to sustainable development and there may be an opportunity for government to provide regulations and/or guidance to help all parties maximise these opportunities.”

Linked to this, Keep Scotland Beautiful made the point that: “We would also want to be reassured by the Scottish Government that the Bill, and its component provisions, will, support and strengthen low carbon measures being progressed in the context of the Climate Change (Scotland) Act 2003. We believe the provisions on participation requests, right to buy and asset transfer could cause changes in land use or public service delivery, and an increase in greenhouse gas emissions if the provisions of the Climate Change (Scotland) Act 2003 are not taken into account.”